



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 18, 1998

Mr. Michael Burkett
Garrett & Burkett
810 Houston Street
Fort Worth, Texas 76102-6290

OR98-0745

Dear Mr. Burkett:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 113863.

The White Settlement Police Department (the "department") received an open records request for "all complaints, whether internal or external, which have been alleged against" a former police officer with the department. You seek to withhold the requested records pursuant to section 143.089 of the Local Government Code in conjunction with section 552.101 of the Government Code.¹

Section 143.089 provides for the creation of two separate and distinct personnel files for police officers: one that is maintained by the city's civil service director and the other by the city police department. With regard to records maintained by the city's police department, section 143.089(g) provides:

(g) A . . . police department may maintain a personnel file on a . . . police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a . . . police officer. *The department shall refer to the director [of civil service] or the director's designee a person or agency that*

¹Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

requests information that is maintained in the . . . police officer's personnel file. [Emphasis added.]

Section 143.089 also requires the establishment of a separate civil service personnel file for each police officer:

(a) The director [of the police officers' civil service] or the director's designee shall maintain a personnel file on each . . . police officer. The personnel file must contain any letter, memorandum, or document relating to:

. . . .

(2) any misconduct by . . . the police officer if the letter, memorandum, or document is from the employing department and if the misconduct resulted in disciplinary action by the employing department in accordance with this chapter

. . . .

(f) The director or the director's designee may not release any information contained in a . . . police officer's personnel file without first obtaining the person's written permission, *unless the release of the information is required by law.* [Emphasis added.]

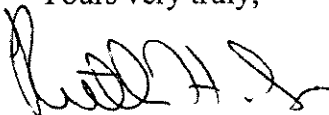
The court in *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied), addressed the availability of information that is contained in the department's internal file pursuant to section 143.089(g). The court determined that section 143.089(g) makes confidential any records kept in a department's internal file. On the other hand, no such confidentiality provision governs information that is maintained in the civil service personnel files pursuant to section 143.089. Information maintained in the civil service personnel files must generally be released to the public upon request, unless some provision of chapter 552 of the Government Code permits the civil service commission to withhold the information. Local Gov't Code § 143.089(f); Gov't Code §§ 552.006, .021; Open Records Decision No. 562 (1990) at 6 (construction of Local Government Code section 143.089(f) provision requiring release of information as required by law).

It is not clear to this office, however, whether the records before us are part of the civil service file established under section 143.089(a) or the department's internal personnel file established under section 143.089(g). Although you state that "each complaint found to be groundless was not placed in his personnel file," we note that some of the records before us pertain to sustained allegations against the officer. However, assuming these sustained allegations did not result in "disciplinary action by the employing department in accordance

with this chapter," *see* Loc. Gov't Code § 143.089(a)(2), we conclude that all of the records at issue are confidential under section 143.089(g), and therefore must be withheld from the public pursuant to section 552.101 of the Government Code.²

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/RWP/ch

Ref.: ID# 113863

Enclosures: Submitted documents

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(w/o enclosures)

²We assume that the department complied with the procedural requirement provided in section 143.089(g) and referred the requestor to the director of civil service for any responsive records held by that entity. Information contained in personnel files held by the civil service must be released unless the information comes within one of the Open Records Act's exceptions to required public disclosure.